IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 469 of 1999

Date of decision: 11th January, 2006

The Mahalakshmi Cooperative Marketing ….. Petitioner

Versus

State of H P & others ….. Respondents

Coram:

The Hon'ble Mr.Justice K C Sood,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr R K Gautam, Senior Advocate, assisted by Ms Archana Dutt, Advocate.**

For respondents No.1 to 3: **Mr Ashok Chaudhary, Addl. A G**
For respondent No.4: **Mr D D Sood, Senior Advocate, Assisted by Mr Sunil Awasthi, Advocate.**
For respondent No.5 **Ms Salochna, Advocate, vice Mr O P Thakur, Advocate.**

K C SOOD,J. **(Oral)**

It appears respondent No.4 is the authorized dealer of the Indian Oil Corporation under a license, for distribution of the LPG Cylinders, at Kotkhai. The distribution of LPG Cylinders was further given, in a meeting of Public Distribution System Committee, under the

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

Chairmanship of respondent No.3 Deputy Commissioner, Shimla, to the petitioner for six months with the condition that working of the petitioner society will be reviewed after six months. Subsequently, in a meeting held on 6th May, 1999 under the Chairmanship of Deputy Commissioner (respondent No.3), it was decided that a three members Committee consisting of District Food and Supplies Controller, Shimla, Assistant Registrar Cooperative Society, Jubbal and Area Manager Civil Supplies Corporation, Shimla, will review the distribution work of LPG Cylinders by the petitioner society and submit its report before the scheduled meeting of the Committee on 7th June, 1999. Based on the report, submitted by the Committee on 19th June, 1999, the Committee decided that respondent No.5 (**the Kotkhai Tehsil Cooperative Marketing and Consumers Union)** has better infrastructure, compared to the petitioner society viz. the place for distribution of filled Gas Cylinders, go-down and storage accommodation and transport etc. whereas the petitioner society had kept the filled cylinders in a go-down situate in thickly populated area, surrounded by different shops and hotels/tea stalls etc. The Committee also

took a view that LPG being highly explosive, it would be appropriate if the distribution work of the LPG Cylinders should be given to an institution having a safe place for storage/distribution to avoid any accident or mishap.

Aggrieved, the petitioner is in this petition.

The case of the petitioner society is that the action of the Committee in giving distribution to respondent No.5 is malafide, arbitrary and the ground that respondent No.5 has better infrastructure and safe storage place is baseless inasmuch as the distributors at focal points are not entitled to make storage of LPG. Their only work is to get the filled up cylinders from the Gas Agency on a particular day and to distribute these cylinders to the consumers.

Heard Mr R K Gautam, learned Senior Advocate, for the petitioner and Mr D D Sood, learned Senior Advocate, for respondent No.4, Mr.Chaudhary, learned Additional Advocate General, for respondents nO.1 to 3 and Ms Salochana,learned counsel appearing vice counsel for respondent No.5.

It is admitted position before me that respondent No.4 HP State Civil Supplies

Corporation is the dealer/distributor for the distribution of LPG cylinders and products at Kotkhai. At the best, as observed by the Division Bench of this Court in ***The Kumarsain Tehsil Co-operative M & C Union Ltd. Narkanda vs State of H P and others*** **(CWP No. 509 of 1998) decided on 28th December, 1998, the petitioners were acting in the shoes of HP State Civil Supplies Corporation by virtue of an internal arrangement almost akin to that of a licensee or sub-agent for a limited period of six months and, therefore, they have no right to challenge the action of the respondents. The petitioners, it is admitted position, are not grantees of the rights/privilege of distributorship of LPG Products themselves by the Oil Company, without which they cannot claim any rights to carry on the business of distribution of LPG Cylinders. They are not vested with any right / privilege of any policy / guidelines / procedures governing such grants without applying pursuant to any public call by any of the Oil Company and participation in the selection process prescribed under such policy. It was merely an internal arrangement between the petitioner and the Civil Supplies Corporation that the petitioner was**

permitted to distribute the cylinders on behalf of the Civil Supply Corporation to the consumers.

The Division Bench went on to observe that it would neither be legal nor proper or possible for the petitioner to claim to carry on the business in the distribution of LPG products as the very arrangement made between the petitioner and the Civil Supply Corporation was "impermissible in law" and the special rights or privilege granted to the respondent/corporation as a department/limb/instrumentality of the State Government could not be parted with such rights/ privilege even by internal or ad-hoc Arrangement.

Their Lordships observed that the courts of law cannot be a party to perpetuate improper and unethical arrangements entered into between the parties opposed to the policy, guidelines and procedures formulated by the Union of India for uniform and universal application in the matter of grant of distributorship of petroleum products.

In view of the decision of the Division Bench, noticed above, the writ petition is untenable and is dismissed as such.

It will only be appropriate to direct respondent No.4 to re-consider the distribution of the LPG cylinders and other products which has been given to respondent No.5 in view of the observations made herein above and take appropriate decision within eight weeks from today.

January 11, 2006 **(K C Sood),J.**
(D)